

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
of
Supply Resources, Inc.

:

:

: AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or a Revision :
of a Determination or a Refund of Corporation :
Franchise Tax under Article 9A of the Tax Law :
for the Years 1973, 1974 :

State of New York
County of Albany

Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 1st day of May, 1981, he served the within notice of Decision by certified mail upon Supply Resources, Inc., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Supply Resources, Inc.
85 Tenth Avenue
New York, NY 10011

and by depositing same enclosed in a postpaid properly addressed wrapper in a (post office or official depository) under the exclusive care and custody of the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the petitioner herein and that the address set forth on said wrapper is the last known address of the petitioner.

Sworn to before me this
1st day of May, 1981.

Annex A. England

J. Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition
of
Supply Resources, Inc.

:

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: AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or a Revision :
of a Determination or a Refund of
Corporation Franchise Tax :
under Article 9A of the Tax Law
for the Years 1973,1974 :

State of New York
County of Albany

Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 1st day of May, 1981, he served the within notice of Decision by certified mail upon William Slivka, the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

William Slivka
292 Madison Avenue
New York, New York 10017

and by depositing same enclosed in a postpaid properly addressed wrapper in a (post office or official depository) under the exclusive care and custody of the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the representative of the petitioner herein and that the address set forth on said wrapper is the last known address of the representative of the petitioner.

Sworn to before me this
1st day of May, 1981.

Annie A. Hegeland

J. Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION
ALBANY, NEW YORK 12227

May 1, 1981

Supply Resources, Inc.
85 Tenth Avenue
New York, NY 10011

Gentlemen:

Please take notice of the Decision of the State Tax Commission enclosed herewith.

You have now exhausted your right of review at the administrative level. Pursuant to section(s) 1090 of the Tax Law, any proceeding in court to review an adverse decision by the State Tax Commission can only be instituted under Article 78 of the Civil Practice Laws and Rules, and must be commenced in the Supreme Court of the State of New York, Albany County, within 4 months from the date of this notice.

Inquiries concerning the computation of tax due or refund allowed in accordance with this decision may be addressed to:

NYS Dept. Taxation and Finance
Deputy Commissioner and Counsel
Albany, New York 12227
Phone # (518) 457-6240

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative
William Slivka
292 Madison Avenue
New York, NY 10017
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
of
SUPPLY RESOURCES, INC.
for Redetermination of a Deficiency or
for Refund of Franchise Tax on Business
Corporations under Article 9-A of the
Tax Law for the Years 1973 and 1974.

DECISION

Petitioner, Supply Resources, Inc., 85 Tenth Avenue, New York, New York 10011, filed a petition for redetermination of a deficiency or for refund of franchise tax on business corporations under Article 9-A of the Tax Law for the years 1973 and 1974 (File No. 19767).

A formal hearing was held before Edward L. Johnson, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on May 18, 1979 at 9:30 A.M. Petitioner appeared by Sherman, Feigen & Slivka, Esqs. (William Slivka, Esq., of counsel). The Audit Division appeared by Peter Crotty, Esq. (Bruce M. Zalaman, Esq., of counsel).

ISSUES

I. Whether interest paid by petitioner on notes which represented installment obligations arising upon the purchase from certain individuals of their shares of corporations which became petitioner's subsidiaries, was properly deducted by petitioner in computing entire net income.

II. Whether the assertion against petitioner of greater deficiencies, subsequent to its filing of a petition and subsequent to service upon it of the Audit Division's answer, was proper.

FINDINGS OF FACT

1. On January 11, 1977, the Audit Division issued to petitioner, Supply Resources, Inc., statements of audit adjustment and notices of deficiency,

asserting additional franchise taxes due in the following amounts:

<u>YEAR</u>	<u>TAX</u>	<u>INTEREST</u>	<u>TOTAL</u>
1973	\$ 5,915.00	\$125.37	\$ 6,040.37
1974	4,723.00	732.77	5,455.77
	<u>\$10,638.00</u>	<u>\$858.14</u>	<u>\$11,496.14</u>

Said deficiencies were asserted as a result of the disallowance of "deductions attributable to subsidiary capital". For 1973, the disallowances were as follows: acquisition of subsidiaries, September 8, 1971, interest in the sum of \$100,178.00; acquisition of subsidiaries, February 1, 1973, interest of \$24,783.00. For 1974, the respective amounts of the disallowances were \$80,949.00 and \$19,933.00.

2. By letter dated August 17, 1977, the Audit Division made certain further adjustments and asserted greater deficiencies against petitioner: for 1973, \$6,447.00 and for 1974, \$5,161.00. It was the opinion of the Audit Division that it had erroneously permitted a ten percent deduction of interest paid to stockholders and that all the questioned interest should have been added back in the computation of entire net income, insofar as it was directly attributed to subsidiary capital. Aside from offering said letter into evidence at the hearing, the Audit Division offered no further proof on the issue of the increased deficiencies asserted against petitioner.

3. Petitioner is a New York corporation, the principal activity of which is manufacturing. Petitioner timely filed corporation franchise tax reports for the years at issue.

4. Prior to 1973, petitioner acquired the stock of the Supply Manufacturing Group (which was comprised of Bac-A-Brand Products, Inc.; Dura Bac Sales, Inc.; David Traum, Inc.; G & W Trimming Sales, Inc.; Ace Slitting Corp.; and E-Z Buckle, Inc.) from the shareholders thereof for cash and installment notes, the notes and interest thereon payable on an annual basis until 1979.

These corporations thence became petitioner's wholly-owned subsidiaries. The installments and interest were paid to the sellers who, with the exception of one non-resident individual, reported said income for New York income tax purposes.

5. During the years at issue, petitioner's subsidiaries made advances to petitioner, which were treated as intercompany transfers without any interest charged thereon. As of December 31, 1973, petitioner owed to its subsidiaries \$306,417.00; as of the last day of 1974, Supply Resources, Inc. owed its subsidiaries \$701,408.00.

6. For 1973, petitioner took as a deduction in computing entire net income dividends from subsidiaries, which it enumerated at Schedule C as follows:

Dividends from subsidiaries	
David Traum, Inc.	\$330,000.00
Supply Mfg. Co., Inc.	125,000.00
Bac-A-Brand Products, Inc.	199,530.00
	<u>\$654,530.00</u>

For 1974, petitioner took a like deduction in the amount of \$140,000.00.

CONCLUSIONS OF LAW

A. That section 208.9(b)(6) of the Tax Law provides that entire net income of the corporate taxpayer shall be determined without deduction or exclusion of:

"in the discretion of the tax commission, any amount of interest directly or indirectly and any other amount directly attributable as a carrying charge or otherwise to subsidiary capital or to income, gains or losses from subsidiary capital."

Section 208.4 furnishes the definition of subsidiary capital:

"The term 'subsidiary capital' means investments in the stock of subsidiaries and any indebtedness from subsidiaries, exclusive of accounts receivable acquired in the ordinary course of trade or business for services rendered or for sales of property held primarily for sale to customers, whether or not evidenced by written instrument, on which interest is not claimed and deducted by the subsidiary for purposes of taxation under articles nine-a, nine-b, nine-c....".

B. That in the case at hand, indebtedness, in the form of notes with interest payable thereon, was incurred by petitioner pursuant to its acquisition of the stock of subsidiaries. Accordingly, the aforesaid interest payments were directly attributable to subsidiary capital and must be added back for the purpose of computing entire net income. See Matter of World Wide Volkswagen Corp., State Tax Commission, April 30, 1974; Matter of Norton Co., State Tax Commission, May 18, 1973; Matter of Texaco, Inc., State Tax Commission, December 22, 1971; Matter of Chock Full O' Nuts Corp., State Tax Commission, August 11, 1971. This result is not altered by the fact that for the years at issue, cash advances flowed from subsidiaries to parent rather than vice versa. It is noted that petitioner availed itself of the opportunity to take as a deduction dividends received from certain subsidiaries.

C. That section 1089(d)(1) vests in the Tax Commission the authority to determine a greater deficiency than that asserted in the Notice of Deficiency, where a petition has been filed as to the latter. However, section 1089(e)(3) then places the burden of proof as to whether petitioner is liable for such increase in deficiency upon the Audit Division. The Division failed to sustain that burden in the instant proceeding.

D. That the petition of Supply Resources, Inc. is granted to the extent indicated in Conclusion of Law "C"; that the greater deficiencies asserted August 17, 1977 are hereby cancelled; and that the notices of deficiency, as originally issued on January 11, 1977, are sustained in full.

DATED: Albany, New York

MAY 01 1981

STATE TAX COMMISSION

James G. Teller
PRESIDENT

Thomas H. Smith
COMMISSIONER

Francis R. Koenig
COMMISSIONER